

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
CORPUS CHRISTI DIVISION

RONALD ELIZONDO SR. et al.,
Plaintiffs,

v.

DONALD HINOTE et al.,
Defendants.

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Civ. Action No. 2:20-cv-00191

Jury trial requested

**DA's Office Defendants' Conditional Objection to
Magistrate Judge's Recommendation**

Mark Gonzalez, Michelle Putman, Angelica Hernandez, and Sharra Rodriguez (the "DA's Office Defendants") desire to preserve alternate grounds for dismissal of the claims against them, so this Court and any appellate court may consider those grounds as further support for dismissal of this matter. *See Memo. and Rec.* (Doc. 121), at 27 (recommending dismissal). Some Circuits do not require an objection to preserve an alternate ground that supports a magistrate judge's recommended disposition. *See, e.g., U.S. v. Street*, 917 F.3d 586, 598-599 (7th Cir. 2019) (citing cases from additional Circuits). The Fifth Circuit has not spoken on that matter.

The DA's Office Defendants therefore make this conditional objection, under Rule of Civil Procedure 72(b)(2), to preserve the alternate grounds for dismissal that are stated in their *Motion to Dismiss of Defendants Gonzalez, Putman, Hernandez, and Rodriguez* (Doc. 86). The Magistrate Judge denied that motion as moot because the Magistrate Judge relied on a ground stated in a later motion. *See*

Memo. and Rec. (Doc. 121), at 9-17, discussing DA's Office Defendants and Nueces County's Motion to Dismiss for Lack of Jurisdiction (Doc. 109).

If the Court adopts the Magistrate Judge's reasoning, the result is a dismissal of all claims against the DA's Office Defendants. *See Memo. and Rec.* (Doc. 121), at 2, 16-17, 27-28. The Court would not need to consider the issues raised in the earlier motion, such as whether the pleadings adequately state a constitutional claim and whether prosecutorial or qualified immunity defeats any such claim. *See Mot. to Dismiss* (Doc. 86), at 3-23. But if Plaintiffs object to the memorandum and recommendation, or if the Court does not adopt the memorandum and recommendation, the DA's Office Defendants want the Court and any appellate court to consider those grounds as alternate bases for dismissal.

This objection is therefore conditioned on an objection to or rejection of the parts of the Magistrate Judge's memorandum and recommendation that pertain to the dismissal of claims against the DA's Office Defendants for lack of jurisdiction. *See Memo. and Rec.* (Doc. 121), at 2, 9-17, 27-28.

Prayer for relief

The DA's Office Defendants ask that the Court adopt the Magistrate Judge's memorandum and recommendation and dismiss the claims against them. The DA's Office Defendants alternatively ask that the Court consider this conditional objection and dismiss the claims against them on the alternate grounds presented in their earlier motion to dismiss (Doc. 86). The DA's Office Defendants also ask for any other relief to which they are entitled.

Respectfully submitted,

/s/ Brian Miller

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Certificate of Service

I certify that, on May 20, 2022, a true copy of this document was served, via the e-filing system, on all counsel of record listed below:

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